thing done or given by the debtor is in some respect different from that which the creditor was entitled to demand, it will be a good consideration for the promise to discharge. The fact that the difference is slight will not destroy its efficacy in constituting a consideration, for if the courts inquired whether the thing done in return for a promise was sufficiently unlike that to which the promisor was already entitled, they would be inquiring into the adequacy of the consideration; and this the courts will not do.

Payment of a smaller amount than what is due by a negotiable instrument (e.g. a cheque) has been held to constitute consideration (*Goddard* v. *O'Brien,*[1]) as there the creditor is getting something different from (and in a way of more value than) that which he was entitled to get.

Here instead of $19,000 odd in cash, to which he was entitled, the plaintiff got a cheque payable immediately on demand, $500 in cash and a post-dated cheque (dated not very far ahead) for $13,500. The case of the *Royal Bank of Scotland* v. *Tottenham* [2] I take to be authority for the proposition that a post-dated cheque is a negotiable instrument, and in my judgment a post-dated cheque is a negotiable instrument.

The plaintiff therefore got $500 in cash plus two negotiable instruments totalling in value $16,500, something different (and with different possibilities of use) from that to which he was entitled. Accordingly there was consideration for his agreeing to take only $17,000.

In addition he received $3,500 at once and a negotiable instrument for $13,500 encashable in at the very most 3 or 4 weeks, and this can be considered payment at an earlier date than he had a right to expect or insist on, because in the circumstances, the plaintiff being the party who asked for rescission of the building contract, he could expect to get payment in full only when the defendant had been given a reasonable time to obtain sufficient money to put him in a position to refund.

I hold accordingly that there was a binding agreement between the parties that the $17,000 paid to Mr. Seah for the plaintiff should be accepted by the plaintiff in full payment of the amount due to him by the defendant.

There arises, however, yet another obstacle to final decision — the fact that the cheque for $13,500 was stopped before payment. It may be argued that on its stopping the agreement to take $17,000 in full settlement was itself rescinded by mutual agreement, and that therefore the position and the amount due went back to what they were before the agreement was made (except, necessarily, that the debt due was less by $3,500). But this argument cannot be upheld in these circumstances, where the plaintiff has received in fact the amount of $3,500, part of the $17,000 agreed on, and where it was the plaintiff who asked for the cheque to be stopped for his own reasons. Also, ever since the stopping the defendant has clearly been regarded by both parties, as the evidence well shows, as holding the $13,500 (indeed a cheque for $13,500) for the plaintiff.

It is my judgment, therefore, that the plaintiff is now entitled to be repaid by the defendant $10,358.50, not $15,254.50, and I accordingly order that the defendant pay to the plaintiff the sum of $10,358.50.

ADDENDUM.

A.R. Sum of $10,358.50 lodged in court with defence.

Court The plaintiff is awarded the costs up to the date on which the defence was filed and the $10,358.50 was lodged, costs to be taxed. The defendant is awarded his costs of all the proceedings after the date of the lodgment of the said $10,358.50.

Judgment for the plaintiff for the sum found due.

CHOP WONG SOONG CO. v. KHOO HEAN KEE

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) May 22, 1964]

[Ipoh — Federal Court Civil Appeal No. 29 of 1964]

Certiorari — Proceedings before inferior court — No objection taken in — Non-exercise of right of appeal within statutory time limit — Expiration of time for certiorari — English R.S.C. 1883 O. 59 r. 4(2).

This was an appeal from a decision of the High Court, dismissing an application for leave to apply for an order of *certiorari.* The applicant sought to set aside a decision of the Rent Board on the grounds of error in law and failure of natural justice. The applicant although represented by counsel did not raise these matters at the hearing before the Rent Board. The application for *certiorari* was made after the limit of six months laid down by rule 4(2) of Order 59 of the English Rules of Supreme Court.

Held: even apart from the delay, the applicant had disentitled himself to leave to apply for *certiorari* because he took no exception to what was done at the hearing before the Rent Board.

Cases referred to:—

(1) *King* v. *Williams* [1914] 1 K.B. 608.

(2) *Reg.* v. *Justices of Surrey* L.R. 5 Q.B. 466.

(3) *Munday* v. *Munday* [1954] 2 All E.R. 667.

(4) *Fulker* v. *Fulker* [1936] 3 All E.R. 636.

FEDERAL COURT.

N. Sharma for the appellant.

F. C. Arulanandom for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal from a decision of the High Court dismissing an application for leave to apply for an order of *certiorari* out of time.

The applicant, the present appellant, was a party to certain proceedings before the local Rent Board which terminated on 10th April, 1963, in a decision which was unfavourable to him and which he wished to contest. He wished to contest it on two grounds. The first was that there had been an error of law in the interpretation of a section of the Control of Rent Ordinance. The other was there has been a failure of some sort of what is called natural justice because the members of the Board who originally sat on his application were not the same as those who finally disposed of it. In the circumstances he had two courses open to him. He had his statutory right of appeal within fourteen days and he could come to the High Court and ask for *certiorari.*

He elected to exercise his right of appeal but failed to do so within the statutory time of fourteen days. He made application to the High Court for extension of that time which was granted but unfortunately for him that decision of the High Court was reversed on appeal.

He then decided to adopt his other remedy of applying for *certiorari,* but owing to the period which had elapsed between the decision of the High Court and its subsequent reversal time had run beyond the limit of six months laid down by rule 4(2) of Order 59 of the English Rules of the Supreme Court, which is the relevant statutory instrument.

This is a matter which the legislature in its wisdom has left to be governed by the rules of the English court rather than by local rules. It would therefore seem to be important that we should be particularly careful to follow the practice of the English courts in such a matter and in particular the practice of the Divisional Court which is the appropriate court in England.

That leads us to the view that with great respect to the arguments which have been addressed to us the matter is concluded by what was said in the case of *The King* v. *Williams.*[1] In that case what was asked for was *certiorari* in respect of certain proceedings before justices. The applicant had been convicted for a contravention of a law restricting the number of bakers. One of the justices was a baker therefore, it was submitted biased. In the circumstances it was said the applicant was entitled to have his conviction quashed *ex debito justitiae.* The court did not agree and Channell J. said:—

"The court is of opinion that this rule should be discharged. No objection was taken to the jurisdiction of the court below at the hearing before that court; that being so, it is the rule of this court not to grant a writ of *certiorari* except upon an affidavit which negatives knowledge on the part of the applicant when he was before the court below of the facts on which he bases his objection. That rule is established on good grounds. It applies equally whether the objection is on grounds which make the act of the justices voidable or void. When objection to a conviction is taken merely by a member of the public and not by a party more particularly aggrieved the granting of a *certiorari* is discretionary; where the objection is by a party aggrieved, then, as a rule, the writ issues *ex debito justitiae:* but a party aggrieved may by his conduct preclude himself from taking objection to the jurisdiction of an inferior court."

Much the same thing was said more compendiously by Rowlatt J. who said:—

"If the applicant claims as a member of the public the answer to his application is that the writ is discretionary and should not be granted in the present circumstances. If he takes up the position of a party aggrieved, then *Reg.* v. *Justices of Surrey* [2] shews that he can by his conduct debar himself from his right *ex debito to justitiae.* It is a very salutary rule that a party aggrieved must either show that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so."

At this stage I would make it clear in case anything said here be misunderstood that this case is clearly to be distinguished from the two cases which were cited to us — *Munday* v. *Munday* [3] and *Fulker* v. *Fulker.*[4] In each of these cases what was in question was an appeal from the decision of the justices and in each of them it was open to the appellant on appeal to raise any valid objection to the proceedings before the justices. In *Williams'* case it was *certiorari* which was asked for — a discretionary remedy in the particular circumstances of the case.

That case is on all fours with the present case. The present appellant was represented by counsel at the first hearing of the Board on 27th November, 1962, and at the second sitting on 10th April, 1963. He was therefore well aware of something which he now alleges to be wrong and yet he made no objection at the time before the Board. Now he has asked for leave to apply for *certiorari* out of time but apart from the delay he has in our opinion disentitled himself to leave because at the time he took no exception to what was done.

In the circumstances we consider that this application was rightly refused by the judge and we dismiss his appeal against that refusal with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *N. Sharma*; *Arulanandon & Co.*